

**UNITED STATES COURT OF APPEALS**

**JUN 10 1997**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

ROY HENNEGEN,

Plaintiff-Appellant,

v.

DUANE TAYLOR,

Defendant-Appellee.

No. 96-1547  
(D.C. No. 96-Z-1602)  
(Colorado)

**ORDER AND JUDGMENT\***

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Plaintiff Roy Hennegen filed a lawsuit in state court against Duane Taylor, the branch manager for Alternative Resources Corporation, claiming that Mr. Taylor underpaid Mr. Hennegen in the amount of \$21,994.45 for work performed by Mr. Hennegen. Mr. Taylor removed the case to federal court on the grounds that Mr. Hennegen was actually complaining about federal and state taxes since the amount withheld from his salary constituted federal and state income taxes and social security required to be withheld by federal and state law. Mr. Hennegen appeals the district court's grant of Mr. Taylor's Motion for Judgment on the Pleadings and for Sanctions. We affirm.

Mr. Hennegen contends on appeal that he is not a federal government employee as required by the definition of "employee" in the Internal Revenue Code, 26 U.S.C. § 3401(c). Unfortunately for him, all employees, not just employees of the federal government, are required to submit to federal tax withholding. See United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) (contention that "under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute."). We agree with the district court, substantially for the reasons stated in its Order of Dismissal that "[t]his lawsuit is simply a disturbing effort to undermine our nation's tax system." Rec., vol I, tab 21 at 2. Consequently, we **AFFIRM** the judgment of the district court, including the award of sanctions.

Mr. Taylor requests that we grant sanctions on appeal on the grounds this appeal is frivolous and vexatious. We grant the motion and award Mr. Taylor double costs and attorney's fees as a sanction. See Lonsdale v United States, 919 F.2d 1440, 1448 (10th Cir. 1990). We **REMAND** to the district court for a determination of the amount of reasonable attorney's fees expended by Mr. Taylor for defending this appeal.

ENTERED FOR THE COURT

Stephanie K. Seymour  
Chief Judge